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**MAY 06 2010**

**OFFICE OF PETITIONS**

In re Application of	:
Rundquist et al.	:
Application No. 10/676,207	: DECISION ON PETITION
Filed: September 30, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2580-0057	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 28, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

With regards to item (1), petitioner has requested benefit of Application No. 09/060,520 filed on April 14, 1998. However, this nonprovisional application abandoned on October 18, 2002. Therefore, since the instant application was filed on September 30, 2003, no copendency exists between these two applications. Copendency between the instant application and the prior application is required. Further, since the applications are not copending, the benefit claim to the prior-filed nonprovisional is improper. Applicant is required to delete the reference to the prior-filed application from the first sentence(s) of the specification, unless applicant can establish copendency between the applications.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment<sup>1</sup> correcting the above matter, along with a renewed petition under 37 CFR 1.78(a)(6), is required. No further petition fee is necessary.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/  
Liana Walsh  
Petitions Examiner  
Office of Petitions

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<sup>1</sup> Note 37 CFR 1.121